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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 SAMANTHA A. BURNETT,) Case No. CV 14-00291 DDP (PLAx)
11 Plaintiff,)
12 v.) **ORDER GRANTING DEFENDANT'S MOTION
TO DISMISS**
13 NORTHWEST TRUSTEE SERVICES,)
INC.,) [Dkt. Nos. 9, 11]
14 Defendant.)
15)
16 _____)

17 Presently before the court is Defendant Northwest Trustee
18 Services, Inc. ("Northwest")'s Motion to Dismiss. Having
19 considered the submissions of the parties, the court grants the
20 motion and adopts the following order.¹

21 **I. Background**

22 As described in Northwest's motion, and undisputed by
23 Plaintiff, in 2007 Plaintiff obtained a loan secured by a Deed of
24 Trust to property located at 811 North Albertson Avenue in Compton,
25 California. In August 2013, Northwest recorded a Notice of

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27 _____
28 ¹ The court construes pro se Plaintiff Samantha Burnett's
"Notice of Motion to Deny Defendant's Motion" (Dkt. No. 11) and
"Response to Defendant's Reply" (Dkt. No. 16) as an opposition to
the motion.

1 Default, and in December 2013 recorded a Notice of Trustee's sale.
2 The sale took place in January 2014.

3 Plaintiff then filed the instant complaint against Northwest
4 alleging causes of action for (1) "Negligent, Wanton, and/or
5 Intentional Hiring and Supervision of Incompetent Employees or
6 Agents" and (2) violation of the Fair Debt Collection Practices Act
7 ("FDCPA"), 15 U.S.C. § 1692. Northwest now moves to dismiss.

8 **II. Legal Standard**

9 A complaint will survive a motion to dismiss when it contains
10 "sufficient factual matter, accepted as true, to state a claim to
11 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
12 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
13 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
14 "accept as true all allegations of material fact and must construe
15 those facts in the light most favorable to the plaintiff." Resnick
16 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
17 need not include "detailed factual allegations," it must offer
18 "more than an unadorned, the-defendant-unlawfully-harmed-me
19 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
20 allegations that are no more than a statement of a legal conclusion
21 "are not entitled to the assumption of truth." Id. at 679. In
22 other words, a pleading that merely offers "labels and
23 conclusions," a "formulaic recitation of the elements," or "naked
24 assertions" will not be sufficient to state a claim upon which
25 relief can be granted. Id. at 678 (citations and internal
26 quotation marks omitted).

27 "When there are well-pleaded factual allegations, a court should
28 assume their veracity and then determine whether they plausibly

1 give rise to an entitlement of relief." Id. at 679. Plaintiffs
2 must allege "plausible grounds to infer" that their claims rise
3 "above the speculative level." Twombly, 550 U.S. at 555.
4 "Determining whether a complaint states a plausible claim for
5 relief" is a "context-specific task that requires the reviewing
6 court to draw on its judicial experience and common sense." Iqbal,
7 556 U.S. at 679.

8 **III. Discussion**

9 A. Negligence

10 "The elements of a negligence cause of action are the
11 existence of a legal duty of care, breach of that duty, and
12 proximate cause resulting in injury." Castellon v. U.S. Bancorp.,
13 220 Cal. App. 4th 994, 998 (2013). Whether a duty exists is a
14 question of law, dependent upon a balancing of factors including
15 "the foreseeability of harm to the plaintiff, the degree of
16 certainty that the plaintiff suffered injury, the closeness of the
17 connection between the conduct and the injury, the moral blame
18 attached to the defendant's conduct, the policy of preventing
19 future harm, the extent of the burden to the defendant and
20 consequences to the community" Mendoza v. City of Los
21 Angeles, 66 Cal. App. 4th 1333, 1339 (1998). There can be no
22 negligent supervision, however, without "knowledge by the principal
23 that the agent or servant was a person who could not be trusted to
24 act properly without being supervised." Noble v. Sears, Roebuck &
25 Co., 33 Cal. App. 3d 654, 664 (1973). There can be no liability
26 for negligent hiring unless the employer knows, "or has reason to
27 believe[,] the employee is unfit or fails to use reasonable care to
28 discover the employee's unfitness before hiring him." Juarez v.

1 Boy Scouts of Am., Inc., 81 Cal. App. 4th 377, 398 (2000) (internal
2 quotation and citation omitted).

3 The Complaint does not allege that Northwest owed any duty to
4 Plaintiff in its hiring of its employees, agents, or others. Nor
5 does the complaint allege facts sufficient to establish the
6 existence of a duty, damages, or Northwest's knowledge of its
7 employees' deficiencies. Accordingly, the first cause of action
8 must be dismissed.

9 B. FDCPA

10 The Complaint appears to allege that Northwest violated the
11 FDCPA by attempting to collect on Plaintiff's home loan. The FDCPA
12 generally prohibits abusive, deceptive, and unfair debt collection
13 practices by "debt collectors." 15 U.S.C. § 1692. The term "debt
14 collector," however, does not apply to a mortgage service company,
15 and the FDCPA does not apply to foreclosure-related activities.

16 Lobato v. Accura Loan Servs., No. 11cv2601 WQH, 2012 WL 607624 at
17 *5 (S.D. Cal. Feb. 23, 2012).

18 Northwest has submitted a substitution of trustee designating
19 Northwest as trustee to Plaintiff's Deed of Trust. (Northwest
20 Request for Judicial Notice, Ex. 4.) That substitution was
21 recorded in the Los Angeles County Recorder's Office on August 8,
22 2013. (Id.) Plaintiff does not dispute that the substitution was
23 recorded, but instead raises "the question as to the veracity and
24 validity of the documents" (Dkt. 11 at 2.) The complaint,
25 however, does not allege that Northwest recorded a fraudulent
26 substitution of trustee, nor would such a conclusory allegation
27 suffice. Plaintiff's FDCPA claim is, therefore, dismissed.

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1 **IV. Conclusion**

2 For the reasons stated above, Defendant's Motion to Dismiss is
3 GRANTED.

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6 IT IS SO ORDERED.

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9 Dated: February 9, 2015

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DEAN D. PREGERSON
United States District Judge